

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code section 455B.103(5), the Environmental Protection Commission hereby adopts Chapter 35, “Air Emissions Reduction Assistance Program,” Iowa Administrative Code.

The purpose of this chapter is to establish a financial assistance program to distribute funds appropriated to Iowa through the federal American Recovery and Reinvestment Act of 2009 (Act). The funds will be distributed to eligible applicants through grants or a combination of grants and loans. The program addresses emissions from diesel vehicles and equipment currently used for on-road applications, such as buses and heavy-duty diesel trucks, and non-road applications, such as construction, agriculture, or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and use of clean diesel emerging technologies.

There is an expedited time line for distribution of federal funds to eligible applicants. The Commission is proceeding with these rules in an expedited manner to meet the time line requirements of Section 701 of the federal Act. According to the provision of Section 701, U.S. EPA must report the details of the programs to Congress by mid-May 2009. Disbursement of funds is anticipated to be required shortly after approval of the programs. Guidelines for the financial assistance program and application forms will be posted on the DNR’s Web site.

In compliance with Iowa Code section 17A.4(3), the Commission finds that notice and public participation prior to the adoption of these rules are not practicable and are contrary to the public interest.

These rules are also published herein under Notice of Intended Action as **ARC 7678B** to allow for public comment. This Adopted and Filed Without Notice filing permits the Department to implement the new provisions of the law on the expedited time line provided for in the federal Act.

These rules are intended to implement Iowa Code section 455B.103(5).

These rules will become effective May 13, 2009.

The following amendment is adopted.

Adopt the following new 567—Chapter 35:

CHAPTER 35

AIR EMISSIONS REDUCTION ASSISTANCE PROGRAM

567—35.1(455B) Purpose. The purpose of this program is to provide financial assistance to eligible applicants for the purpose of reducing air pollution emissions.

567—35.2(455B) Definitions. For the purposes of this chapter, the following definitions shall apply:

“*Applicant*” means any unit of state or local government, public or private group, business or individual.

“*Cost share*” means the applicant’s share of proposed eligible project costs.

“*Department*” means the Iowa department of natural resources.

“*Eligible costs*” means costs directly related to the eligible project and for which financial assistance moneys may be used.

“*Eligible project*” means any project which, when implemented, will reduce air emissions.

“*Financial assistance*” means monetary assistance awarded under these rules to an applicant in the form of a grant or loan.

“*Grant*” means an award of assistance with the expectation that, with the fulfillment of the conditions of the award, repayment of funds is not required.

“*Loan*” means an award of financial assistance with the requirement that the award be repaid, including interest as identified in the written agreement between the department and the recipient. A “deferred loan” is one for which repayment of principal or interest, or both, is not required for a

specified period of time. A “forgivable loan” is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“*Recipient*” means any applicant selected to receive financial assistance under these rules.

567—35.3(455B) Role of the department of natural resources. The department is responsible for the administration of the program and for disbursement of funds to eligible projects receiving financial assistance under these rules.

567—35.4(455B) Eligible projects. The department may provide financial assistance to applicants for projects that are consistent with the purpose of this program.

567—35.5(455B) Forms. Applicants shall submit proposed eligible projects on application forms provided by the department. The applications are considered public records.

567—35.6(455B) Project selection. The director has sole discretion to determine which eligible projects will receive an award of moneys under this program. Emphasis in selecting eligible projects will be placed on the amount of air pollution emissions reductions anticipated, cost-effectiveness, and the proposed location of the eligible project. Proposed eligible projects must be in compliance with all applicable state and federal statutes and rules. The director shall evaluate the proposals, and applicants will be awarded financial assistance based on selection criteria contained in the applicable application guidelines available from the department.

567—35.7(455B) Funding sources. The department will use the funds designated by the legislature and other sources to achieve the purpose outlined in these rules.

567—35.8(455B) Type of financial assistance. Financial assistance awarded under this program may be in the form of a loan, forgivable loan, deferred loan, grant, or a combination thereof. The type of financial assistance offered to an applicant is dependent upon the amount of program funds awarded to each selected eligible project. The department reserves the right to offer any combination of financial assistance types to any selected eligible project.

567—35.9(455B) Term of loans. The term of loans executed under these rules shall be determined on a case-by-case basis and shall be based on the specific costs financed, as well as the terms of other financing provided for the eligible project. The written agreement between the department and the recipient will establish other conditions or terms needed to manage or implement the eligible project.

567—35.10(455B) Reduced award. The department reserves the right to offer financial assistance in an amount less than the amount requested by the applicant. In the event that financial assistance offered is less than the amount requested by an applicant, the applicant may be asked to document the impact of the reduced award on the proposed eligible project. Reduced awards shall be offered when the department has determined that:

1. Program resources are insufficient to provide the level of financial assistance requested to all applicants to which the department intends to offer financial assistance.
2. The applicant could implement the eligible project at a reduced level of financial assistance and achieve the eligible project objectives and purpose of this program.

567—35.11(455B) Fund disbursement limitations. No funds shall be disbursed until the department has:

1. Determined the total estimated cost of the eligible project;
2. Determined that financing for the cost-share amount, if applicable, is ensured by the recipient;
3. Received confirmation that all required permits or permit amendments have been obtained by the recipient;
4. Received commitments from the recipient to implement the eligible project; and

5. Executed a written agreement with the recipient.

567—35.12(455B) Applicant cost share. If requested by the department, an applicant for financial assistance shall agree to provide a cost share of funds committed to the eligible project. Financial assistance moneys received by the applicant under these rules are ineligible to be utilized for any portion of the required applicant cost share. Applicant cost share shall be in accordance with the schedule outlined in the applicable application guidelines available from the department.

567—35.13(455B) Eligible costs. Applicants may request financial assistance in the implementation and operation of an eligible project which includes, but is not limited to, funds for the purpose of:

1. Purchase and installation of air pollution reduction equipment;
2. Replacement or modification of air pollution control equipment, or process and equipment, including labor for installation;
3. Development, printing and distribution of educational materials;
4. Planning and implementation of educational forums including, but not limited to, workshops;
5. Expenses directly related to implementation and operation of the eligible project; and
6. Research, laboratory analysis costs, engineering, or consulting fees.

567—35.14(455B) Ineligible costs. Financial assistance shall not be provided or used for costs including, but not limited to, the following:

1. Taxes;
2. Vehicle registration;
3. Legal costs;
4. Contingency funds;
5. Proposal preparation;
6. Contractual project administration;
7. Land acquisition;
8. Office furniture, office computers, fax machines and other office furnishings and equipment;
9. Costs for which payment has been or will be received under another federal, state or private financial assistance program; and
10. Costs incurred before a written agreement between the applicant and the department has been executed. Ineligible costs shall be determined with applicable publications from the federal office of management and budget.

567—35.15(455B) Written agreement. Each recipient shall enter into a contract with the department for the purposes of implementing the eligible project for which financial assistance has been awarded. The contract shall be signed by an authorized representative of the department and the authorized officer of the recipient. In cases in which the department has awarded other than a grant or forgivable loan, the recipient will be required to make regularly scheduled installment payments to retire the loan and any interest assigned to the loan as identified in the executed contract. The recipient will be required to submit periodic progress reports as identified in the executed contract. Progress reports are considered part of the public record. The department may terminate any contract and seek the return of any funds released under the contract for failure by the recipient to perform under the terms and conditions of the contract. Amendments to contracts may be adopted by mutual written consent by the department and the selected applicant.

567—35.16(455B) Financial assistance denial. An applicant may be denied financial assistance for any of the following reasons:

1. Funds are insufficient to award financial assistance to all qualified applicants;
2. The applicant does not meet eligibility requirements pursuant to provisions of these rules;
3. The applicant does not provide sufficient information requested on forms provided by the department pursuant to these rules;

4. The applicant has previously received a loan under these rules and is determined by the department to be delinquent in repaying the loan;
5. The eligible project goals or scope is not consistent with these rules; or
6. The director concludes the denial is appropriate.

These rules are intended to implement Iowa Code section 455B.103(5).

[Filed Without Notice 3/17/09, effective 5/13/09]

[Published 4/8/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/8/09.